

## **REMARKS**

Applicant appreciates the Examiner's indication in the Office Action dated April 17, 2008 (the "Action") that the arguments in Applicant's paper of August 17, 2007 are persuasive and the previous rejections are withdrawn.

### **I. Status of the Claims**

#### **A. Allowable Subject Matter**

Applicant further notes with appreciation that no prior art is cited in the Action with respect to Claims 1-34.

Claims 1-34 stand rejected under 35 U.S.C. 112, second paragraph. Applicant submits that the Section 112 rejections are overcome in view of the amendments above and the remarks below.

Accordingly, Applicant submits that Claims 1-34 are in condition for allowance, which action is respectfully requested.

#### **B. Prior Art Rejections**

Claims 35-37 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,361,503 to Starobin et al. ("Starobin").

In order to expedite prosecution, Claims 35-37 are canceled above without prejudice to the filing of a subsequent continuation application pursuing the subject matter thereof. Accordingly, the rejections of Claims 35-37 are moot.

### **II. Section 112 Rejections**

The Action states that the recitation "measure of cardiac ischemia during stimulation" is unclear because it is allegedly unclear "what type of stimulation and when it is applied to the patient." *See* the Action, page 2.

Applicant submits that the term "stimulation" is clear and satisfies the requirements of Section 112, second paragraph by particularly pointing out and distinctly claiming the subject

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matter of the current invention. For example, a discussion of cardiac stimulation can be found in Applicant's specification, paragraph [0134] of U.S. Publication No. 2005/0038351.

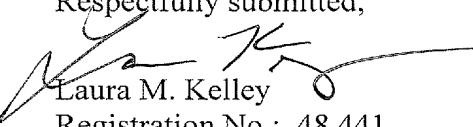
However, in order to expedite prosecution, the term "during stimulation" is deleted above. Accordingly, the portion objected to in the Action now states as follows: "generating from said comparison of step (e) a measure of cardiac ischemia in said subject, wherein a greater difference between said first and second data sets indicates greater cardiac ischemia and lesser cardiac or cardiovascular health in said subject." Accordingly, Applicant submits that the claims clearly satisfy the requirements of Section 112, second paragraph. However, if the Examiner finds that the amendments do not overcome the rejection under Section 112, Applicant solicits the Examiner's suggestions as to satisfactory amendment.

Accordingly, in view of the above amendments and remarks, Applicant requests that the rejection of Claims 1-34 under Section 112 be withdrawn.

As noted above, no prior art is cited with respect to Claims 1-34. The Section 112 rejection is overcome, and therefore, Applicant submits that Claims 1-34 are in condition for allowance. Applicant respectfully requests that Claims 1-34 proceed to allowance in due course.

## CONCLUSION

Accordingly, Applicant submits that the present application is in condition for allowance and the same is earnestly solicited. Should the Examiner have any matters outstanding of resolution, he is encouraged to telephone the undersigned at 919-854-1400 for expeditious handling.

Respectfully submitted,  
  
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## **CERTIFICATION OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on July 17, 2008.

Signature: Joyce Paoli  
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